

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**FRANK MOYA
ADC #118712**

PLAINTIFF

v. **Case No. 4:20-cv-01123-LPR**

LINCOLN COUNTY DETENTION CENTER

DEFENDANT

ORDER

The Court has reviewed the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge Joe J. Volpe. (Doc. 7). No objections have been filed. After careful consideration, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby is, approved and adopted in its entirety as this Court's findings in all respects.¹

IT IS THEREFORE ORDERED that:

1. Plaintiff's claims are DISMISSED without prejudice for failure to state a claim upon which relief may be granted.
2. Plaintiff's Amended Complaint (Doc. 4) is DISMISSED.
3. This dismissal counts as a "strike" for purposes of 28 U.S.C. § 1915(g).

¹ Even after Mr. Moya was provided with guidance by Judge Volpe, Mr. Moya's Amended Complaint stuck with "official capacity only" claims. (Doc. 4 at 2). Judge Volpe explained why those official capacity claims can't survive screening. And Judge Volpe was correct to conclude that, while *pro se* complaints are to be treated liberally, the Court should not assume out of thin air that Mr. Moya was attempting to bring individual capacity claims. Nonetheless, Mr. Moya's Amended Complaint would have failed screening even if it was construed as bringing individual claims. The alleged facts in the Amended Complaint do not state a viable individual capacity claim against any of the persons identified in the Amended Complaint. Maybe there are facts that would, if alleged, state viable individual claims against these persons. But what was alleged is not enough.

4. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations and the accompanying Judgment would not be taken in good faith.

DATED this 2nd day of November 2020.



LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE